**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JAIPUR BENCH, JAIPUR**

S. B. CIVIL MISC. APPEAL NO. 3430/06

Inderpal Singh vs. Avtar Singh & Ors.

Date of Judgment: 22nd March 2007

**Hon'ble Mr. Justice R. S. Chauhan**

Mr. Virendra Singh Yadav for the Appellant
Mr. D. G. Chaturvedi for the Respondents.

(Per Court):
REPORTABLE

This appeal arises out of the order dated 26-8-2006, passed by the Additional District and Sessions Judge (Fast Track), No. 4, Bharatpur, whereby the learned Judge has rejected the application of the appellant for appointment of Receiver / Administrator for managing the affairs of Guru Nanak Senior Secondary School and Guru Harkishan Public School.

The brief facts of the case are that respondent No. 5, the Guru Singh Sabha Shiksha Samiti (henceforth to be referred to as 'the Society', for short), is a registered society under the Rajasthan Societies Registration Act, 1958, having Registration No. 81/78-79 and has its Head Office at Bharatpur. According

to the Constitution of the Society, the object of the Society is to impart education to children, to teach them discipline, to encourage feeling of nationalism amongst them, to teach them about the Punjabi language, etc. For this purpose, the Society runs two schools in Bharatpur, namely the Guru Nanak Senior Secondary School and the Guru Harkihsan Public School. Both these schools are known as the two of the finest schools of the city. Furthermore, according to the Constitution of the Society, the Society is to be run by a Managing Committee in accordance with rules and regulations of the Education Department of the Government. The Managing Committee would consist maximum of fifteen members, out of which the members of the Society would elect eight persons who shall be the lifetime members of the Society. Therefore, the Managing Committee has to be elected and not nominated by the Society. The Managing Committee so elected would have tenure of three years.

It is the case of the appellant that on 25-4-2004, an election of the Managing Committee was held. In the said

election, Mr. Gurudeep Singh, respondent No. 6, was elected as the President, Mr. Mahendra singh Maggo as the Secretary, Mr. Mahendra Singh Cheema as the Vice-president and Mr. Surjeet Singh Chhabra as the Treasurer. The tenure of the said Managing Committee was till 25-4-2007. Although the said Committee started working shortly after the election, but Mr. Avatar Singh, the respondent No. 1 started interfering with the working of the Committee. Subsequently, the respondent No. 6, Dr. Gurudeep Singh, the President, filed a suit. However, later on he withdrew the said suit allegedly under the pressure of the respondent No. 1. Thereupon, the respondent No. 1, Mr. Avatar Singh declared himself to be the President, the respondent No. 2, Mr. Gurunam Singh as the Vice-president, the respondent No. 3, Mr. Gulshan Singh Maggo as the Secretary, and Mr. Balbeer Singh Virk as the Treasurer. Although the said newly formed Managing Committee (henceforth to be referred to as ‘the new Managing Committee”, for short) was not an elected committee, but nonetheless, it started functioning. It is the functioning of this Committee, which the appellant challenged by filing a declaratory suit along with an application for

injunction.

The respondent No. 1 and 4 filed their written statement and denied that any election had taken place on 25-4-2004. According to them, the Sikh community in Bharatpur constituted the Shri Guru Singh Sabha (henceforth to be referred to as ‘the Sabha’, for short). The Sabha is also known as the Gurudwara Bharatpur. In order to promote education amongst the Sikh children in Bharatpur, the Sabha got the Society registered in the name of Shri Guru Singh Sabha Shiksha Samiti. While the Shiksha Samiti was to run the schools, but the ultimate control was that of the Sabha. From the very beginning, the members of the Managing Committee were nominated by the Sabha and were not elected as envisaged in the Constitution. The Sabha had nominated respondent No. 6, Dr. Gurdeep Singh, as the President. However, vide resolution dated 5-9-04, the Managing Committee under him was dissolved. Thereafter, the Sabha has appointed the new Managing Committee. Hence, the new Managing Committee is a legitimately constituted one.

The respondent Nos. 2 and 3 have also filed their replies. But, they have supported the case of the appellant. According to them, the new Managing Committee has not been constituted in conformity with the Constitution of the Society. They also claimed that it is essential that the Managing Committee should be an elected body in accordance with the Constitution. They have also questioned the bona fides of the new Managing Committee, especially in the financial arena. After hearing all the parties, vide order dated 26-8-2006, the learned Judge has dismissed the application for temporary injunction for appointment of Receiver/ Administrator. Hence, this appeal before this court.

Mr. D. G. Chaturvedi, the learned counsel for the respondents, has raised a preliminary objection with regard to the locus standi of the appellant. According to him, the respondent No. 6 had filed a suit challenging the functioning of the new Managing Committee. Subsequently, he had withdrawn the said suit. The appellant happens to be his son. Therefore, the entire suit has been filed with an ulterior motive.

Hence, the appellant has no locus standi to file the suit.

On the other hand, Mr. Virendra Yadav, the learned counsel for the appellant, has argued that the respondent No. 6 is a life-member of the Society. Therefore, he has a right to raise the issue of the welfare of the society. In case, the new Managing Committee is permitted to act in an arbitrary fashion, it would damage, if not destroy, the reputation of the schools. It is the children who shall be the ultimate sufferers. Hence, he is competent to file the suit and the present appeal.

A society registered under the Rajasthan Societies Registration Act, 1958 is nothing but a microcosm of a democratic institution. In democracy each individual has an interest in the efficient running of an institution. Therefore, every member—life member, or otherwise—equally has a right and interest in the welfare of the society. In case the society is not being run in accordance with its Constitution, the member would have a right to insist that the Society be managed in conformity with its Constitution. Therefore, the appellant has a

locus standi to file this appeal. Hence, the preliminary objection raised by the learned counsel for the respondents has no force.

Mr. Yadav has raised various contentions before this court: firstly, once the Constitution of the Society has been adopted, the Society has to be run in accordance with the said Constitution. Merely because members of the Managing Committee have not been elected, but have been nominated by the Sabha, would not make the constitution of the new Managing Committee a valid one. Even if a practice has been followed, but contrary to the Constitution, the said practice does not acquire legitimacy or legality. Secondly, since the new Managing Committee has not been constituted in accordance with the Constitution, the same is an illegally constituted committee. It cannot be allowed to function and to run the schools. For, both according to the appellant and according to the respondent Nos. 2 and 3, the new Managing Committee is mismanaging the schools. There are allegations of financial mismanagement. Therefore, it is imperative that during the pendency of the suit, a Receiver be appointed. Thirdly,

because of the two reasons mentioned above, according to the learned counsel, the appellant has a strong prima facie case in his favor. The balance of convenience is also on the side of the appellant. Lastly, in case a Receiver is not appointed, the schools and the students would suffer an irreparable loss.

Per contra, Mr. Chaturvedi has raised a plethora of counter-arguments: firstly, the schools run by the Society are governed by the Rajasthan Non-Government Educational Institutions Act, 1989 (henceforth to be referred to as ‘the Act’, for short) and by the Rajasthan Non-Government Educational Institutions (Recognition, Grant-in-Aid and Service Conditions etc) Rules, 1993 (henceforth to be referred to as ‘the Rules’, for short). According to Section 10 of the Act, the power to takeover the management of a non-governmental school lies only with the government. The said power does not lie with any other authority. Moreover, Section 41 of the Act bars the Civil Court from granting “any injunction or from making any interim order restraining any proceedings which are being or about to be taken under this Act”. Thus, the learned Judge was justified

in not appointing the Receiver. Secondly, ever since its conception in 1978, the Society has nominated the members of the Managing Committee and no elections have ever been held. Hence, the doctrine of factum valet is applicable. The meaning of the doctrine is that where a fact is accomplished, in other words, where a fact is done and finally completed, though it may be in contravention of hundred directory texts, the fact will stand and the act will be deemed to be legal and binding. Therefore, the new Managing Committee has been constituted validly. Thirdly, Order 40, Rule 1 of the Civil Procedure Code (henceforth to be referred to as 'the Code', for short), lays down the parameters for appointment of Receiver. According to the said provision, a Receiver should be appointed when it is "just and convenient" or when the property is in danger of being wasted, damaged or alienated. In the present case, the property is neither being damaged, nor wasted, nor being alienated. Hence, the impugned order is valid. Fourthly, the appointment of a Receiver would be redundant as vide order dated 11-11-2005, the learned trial court has already directed the respondents to submit monthly income reports before the

court. This order has not been challenged. Thus, it has achieved finality. The Receiver too would have supervised the financial aspect of the Society. Hence, the appointment of a Receiver would be superficial in nature. Lastly, during the pendency of the present appeal, the Society has decided to hold the election. Therefore, there is no need to appoint a Receiver.

We have heard the learned counsels for the parties and have perused the impugned order.

Rule of Law demands and dictates that the people follow the Law. The Constitution, whether of the State or of a Society registered under the Societies Act, is paramount. As people are to follow the Law in a State, so the members of a Society are duty-bound to follow the Constitution of the Society. After all, the Constitution is the soul of the Society. The Society, therefore, cannot function in contravention of its Constitution. To permit the Society to function in violation of its Constitution is to encourage illegal actions and omissions. The Court cannot

be a party to an illegal action. In fact, one of the functions of the judiciary is to ensure that people adhere to the Constitution and the statutory laws.

Under the Rule of Law, it is no argument to claim that a norm or practice has been followed by the Society for decades, although such an action is contrary to the Constitution of the Society. The action of the Sabha has to be tested on the touchstone of Constitution of the Society. In case the action of the Sabha is contrary to the tenor and spirit of its Constitution, the said action cannot be sustained by a court of law. The doctrine of factum valet is applicable to cure the violation of a directory provision or a mere matter of form but does not cure the violation of the fundamental principles or the essence of the transaction. The requirement of Section 9 of the Act and or the Constitution of the Society are fundamental principles. Therefore, their non-observation cannot be justified on the basis of the doctrine of factum valet. Therefore, the contention of the learned counsel for the respondents with regard to applicability of the doctrine of factum valet is unacceptable.

Section 2 (o) of the Act defines the words “management” or “managing committee” as meaning the committee of management constituted under Section 9 and includes the Secretary or any other person, by whatever name designated, vested with the authority to manage and conduct the affairs of the institution. According to Section 9 of the Act, “there shall be constituted a managing committee for every recognized institution”. The word “constituted” would necessary mean “legally constituted in accordance with the Constitution of the Society.” Thus, the said section enjoins that the Managing Committee be duly constituted according to the Constitution of the Society. According to Clause 5 of the Constitution of the Society, “the Sanstha (Society) shall be managed by a Managing Committee in accordance with the Rules of the Education Department. The Managing Committee shall consist maximum of fifteen members. Out of these, eight members shall be elected from the life members of the society.” Thus, Clause 5 clearly visualizes that the Managing Committee shall be constituted in accordance with Section 9 of the Act.

Moreover, it should consist of members, a majority of whom shall be elected by the life members of the society in accordance with Rule 23 of the Rules. However, in the present case, according to the Sabha they have not held a single election since 1978. Since then, the Sabha has nominated the members. Hence, the constitution of the new Managing Committee is in violation of both the Constitution of the Society and of Section 9 of the Act. Interestingly, the respondents are blowing hot and cold simultaneously. On the one hand in the Constitution of the Society they claim that the Managing Committee is bound by the rules framed by the Education Department, yet on the other hand, they are ignoring the tenor and spirit of Section 9 of the Act. Thus, the new Managing Committee, constituted dehors the Constitution of the Society and in violation the Act, cannot be permitted to function. Therefore, the learned Judge should have appointed a Receiver in the instant case.

In the case of Olive E. Malaki v State of Rajasthan (2005 (2) RLR 726), a Division Bench of this court had held that the

holding of the elections for the Managing Committee are mandatory under Section 9 of the Act read with Rule 23 of the Rules.

Section 10 of the Act is as follows:

> (1) Notwithstanding anything contained in any law for the time being in force, whenever it appears to the State Government that the managing committee of any recognized institution has neglected to perform any of the duties assigned to it by or under this Act or the rules made there under or has failed to manage the institution properly and that it has become necessary in the public interest to take over the management of such institution, it may, after giving to such managing committee a reasonable opportunity of showing cause against the proposed action, take over such management and appoint an administrator to exercise control over the assets of the institution and to run the institution for such period as the State Government may from time to time fix.
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> (2) Where, before the expiry of the period fixed under sub-section (1), the State Government is of opinion that it is not necessary to continue the management of the institution by an administrator, such management shall be restored to the managing committee.

Section 41 of the Act is as under:

> Courts not to grant injunction:
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> Notwithstanding anything contained in the Code of Civil Procedure, 1908 or in any other law

> for the time being in force, no court shall grant any temporary injunction or make any interim order restraining any proceedings which are being or about to be taken under this Act. (Emphasis added).

A conjoint reading of these two provisions make it clear that under Section 10 of the Act, the Government is competent to takeover the management of a non-government educational institute. However, before such an action can be taken by the Government, the Government should be satisfied that the recognized institution has-- a) neglected to perform any of the duties assigned to it by or under this Act or under the rules made there under, or b) has failed to manage the institution properly and c) it has become necessary in the interest of the public to takeover the management. Moreover, according to Section 41 of the Act, a civil court is precluded in granting a temporary injunction or an interim order when any proceeding is being continued or is about to be taken under this Act by the Government. Therefore, Section 41 of the Act does not place a blanket ban on the power of the civil court to grant temporary injunction or an interim stay. It eclipses the said power only in two circumstances, namely when a proceeding is about to

begin, or is continued by the government.

However, the present case does not fall within the ambit of either Section 10, or Section 41 of the Act. For, in the present case, the government has not taken any cognizance of the fact that the new Managing Committee has neglected to perform any of the duties assigned to it, or has failed to manage the institution properly and that it has become necessary in public interest to takeover the management. Moreover, since the government has neither contemplated, nor has begun the process of taking over the management, the two conditions of Section 41 of the Act are not satisfied. Hence, the civil court is not debarred from passing an interim order or from granting a temporary injunction against the respondents. Therefore, the contention of the learned counsel for the respondent with regard to the bar on the power of the civil court under Section 41 of the Act is unsustainable.

The learned counsel for the respondents has also argued that the new Managing Committee has not endangered the

property of the Society or of the school. Therefore, there is no need for the appointment of a Receiver. Even this argument is unacceptable. Both the appellant and the respondent No. 2 and 3 have pleaded that the new Managing Committee is committing financial irregularities. In fact, the learned trial court has not granted the new Managing Committee the right to operate the bank account belonging to the Society. This fact clearly proves that the learned trial court is convinced of the fact that the new Managing Committee is indulging in financial bungling. Moreover, the “goodwill” of the school is also part and parcel of its “property”. In case of mismanagement of the Society, the goodwill of the school is bound to be damaged. Hence, it is imperative that an illegally constituted new Managing Committee be prevented from damaging the goodwill of the Society and of the Schools.

Merely because the learned trial court had directed the respondents to furnish the monthly financial statement, would not preclude the learned trial court from appointing a Receiver. Such an argument presupposes that a Receiver is appointed

only to oversee the financial aspect of the Society. An illegally constituted Managing Committee can hurt the interest of the schools in other ways also, e.g. it could hire and fire the employees in violation of the law, thus embroiling the Society in further litigations; it could also hurt the interest of the students by various means. Thus, the argument of the learned counsel for the respondents with regard to the redundancy in appointing a Receiver is without force.

Lastly, during the course of the arguments it was revealed that elections are about to be held for the Managing Committee. Firstly, it seems the respondents took the decision to hold the election during the pendency of the present appeal. Secondly, a bare perusal of the election schedule shows that the election is being held in hot-haste. The filing of the nomination papers, the scrutiny of the nomination papers, the holding of the election, the declaration of the election result is all being done in a single day. Therefore, no time is being given to anyone to raise any objection with regard to Electoral Roll or against the rejection/ acceptance of nomination papers, etc. Thus, the right

of the life member to contest the elections is being muffled. Hence, this court is convinced that the elections are not being held in a bona fide manner or in accordance with law. Thus, vide order dated 2-2-07 this Court had to stay the election process.

In the result this appeal is allowed and the order dated 26-8-2006 passed by the Additional District Judge, (Fast Track), No. 4, Bharatpur in Civil Suit Nos. 15/2005 and 17/2005 with regard to non-appointment of the Receiver/ Administrator is quashed and set aside. The Joint Registrar, Co-operative Societies, Bharatpur is appointed as the Receiver/ Administrator for looking after the day-to-day activities of the Society and he shall operate the Bank Accounts of the Society. The Receiver/ Administrator is also directed to submit the monthly report of the functioning of the schools along with its financial statements before the learned trial court by seventh day of every month. He is, further, directed to hold the election of the Managing Committee within a period of three months, in accordance with Section 9 of the Act read with Rule 23 of the

Rules, from the date of the receipt of the certified copy of this judgment. Upon the completion of the election process, the Joint Registrar shall handover the charge of the Society to the elected Managing Committee. There shall be no order as to cost.

**R. S. Chauhan J.**